

REMARKS

Applicant gratefully acknowledges the Examiner's indication that claims 13 and 80 are allowed.

By this Amendment, Applicant has rewritten claim 75 in independent form and added claims 86-97 which depend from claim 75. In accordance with 37 C.F.R. §1.121(c)(1)(ii), Applicant has attached an Appendix showing the changes to claim 75, with deletions shown by bracketing and additions shown by underlining.

Applicant also has added new claims 98-172, of which claims 98, 129, and 160 are independent. Support for at least some of the subject matter of new claims 86-172 can be found at least in the original claims and in the specification in the last paragraph at page 9 and in the paragraph bridging pages 16 and 17, for example.

At least new claims 86, 88-99, 103-107, 109, 116, 117, 119-130, 134-138, 140, 147, 148, 150-161, and 163-172 "read" on the previously elected species of Figs. 5 and 6.

Claims 1-3, 7-12, 29, 30, 32, 41-43, 48, 49, 52, 59-65, 70-79, 81, 84, and 85 were rejected under 35 U.S.C. §102(b) as being anticipated by Capezzuto (U.S. Patent No. 3,132,370) and claims 38-40, 45, 55, and 67-69 were rejected under 35 U.S.C. §103(a) as being unpatentable over either Capezzuto alone or Capezzuto in view of McCabe et al. (U.S. Patent No. 2,659,919). Of these claims, claims 1, 64, and 75 are independent.

Claim 1 recites, among other things, an "applicator member including at least one block formed of at least one absorbent material capable of being at least partially compressed." Claim 64 recites an applicator device, comprising, among other things,

an “absorbent member comprising at least two portions, a first application portion configured to apply the liquid product to a surface to be treated, and a second support portion configured to elastically support the first portion, wherein the first portion has a different density than the second portion.” Claim 75 recites an applicator device, comprising, among other things, an “absorbent member [that] is compressible.”

The Capezzuto reference is directed to a sealable liquid-dispensing applicator. Referring to Figs. 2 and 3, the Capezzuto reference discloses a squeeze-bottle container 10 having a neck portion 16. A housing 24 having a cylindrical flange 26 is received in the neck portion 16. The cylindrical flange 26 has a radially inward extending mouth portion 28 holding a resilient, absorbent, liquid-permeable membrane 34 and a resilient, abrasion-resistant, liquid-permeable membrane 36.

In the rejection of the claims based on the Capezzuto reference, the Examiner equates the resilient, abrasion-resistant, liquid-permeable membrane 36 to the applicator member recited in claim 1 and to the second support portion recited in claim 64. Also, the Examiner equates the resilient, absorbent, liquid-permeable membrane 34 of Capezzuto to the first application portion recited in claim 64.

However, the Capezzuto reference neither discloses nor otherwise suggests that membrane 36 is “formed of at least one absorbent material,” as recited in claim 1. Rather, the Capezzuto reference discloses that membrane 34 is absorbent, and not membrane 36. At col. 1, lines 53-57 and at col. 2, lines 64-66, the Capezzuto reference discloses the membrane 36 as being made of a woven or perforated plastic, fiber or sheet material, **not** an absorbent material. Thus, the Capezzuto reference neither discloses nor otherwise suggests an “applicator member including at least one block

formed of at least one absorbent material capable of being at least partially compressed," as recited in independent claim 1 and, therefore, independent claim 1 is patentably distinguishable from the Capezzuto reference.

As explained above, the membrane 36 taught by Capezzuto is not absorbent. Capezzuto thus fails to disclose or otherwise suggest an "absorbent member comprising . . . a first application portion . . . and a second support portion," as recited in independent claim 64 and, therefore, claim 64 also is patentably distinguishable from the Capezzuto reference.

At page 5 of the Office Action, the Examiner further asserts that:

"the Capezzuto reference discloses the membrane 36 being a permeable membrane which may be formed of fabrics of artificial or natural fibers. . . . To an extent, a permeable membrane being made of fabrics of natural fibers (cotton) is capable of absorbing liquid and is considered as an 'absorbent' material."

Applicant respectfully disagrees with the Examiner's assertions regarding the Capezzuto reference. To begin with, the Capezzuto reference neither discloses or otherwise suggests that the permeable membrane 36 is made of cotton. The Capezzuto reference nowhere discloses, either explicitly or implicitly, that the natural fibers with which the permeable membrane can be made include cotton and the Examiner provides no basis for asserting otherwise. There are many natural fibers that the permeable membrane could be made from and there is nothing in the Capezzuto reference that would suggest to a skilled artisan that the permeable membrane is made of cotton. To the contrary, the Capezzuto reference explicitly describes the membrane 34, and **not** the membrane 36, as "absorbent" and made of cotton. This would suggest to skilled artisans that membrane 36 is neither absorbent nor made of cotton.

Additionally, the Capezzuto reference also does not disclose or otherwise suggest that the membrane 36 is either “compressible,” as recited in claim 75, or “capable of being at least partially compressed,” as recited in claim 1. Indeed, the Examiner has not explained in the Office Action how the Capezzuto reference discloses or otherwise suggests that the membrane 36 is compressible or capable of being at least partially compressed. For at least this reason, claim 75 and its dependent claims 86-97 are patentably distinguishable from the Capezzuto reference.

The McCabe et al. reference relied on in combination with the Capezzuto reference to reject certain dependent claims, as noted above, does not cure the above-noted deficiencies of the Capezzuto reference, and the Examiner has not asserted otherwise in the Office Action.

Based on at least the above-stated reasons, Applicant respectfully requests the withdrawal of the claim rejections based on the Capezzuto reference, whether applied alone or in combination with the McCabe et al. reference. In light of the allowability of independent claims 1 and 64 Applicant requests the rejoinder of claims 4-6, 14-28, 33-37, 44, 46, 47, 50, 51, 53, 54, 56-58, 66, 82, and 83, and the timely allowance of claims 1-85. Applicant also requests the timely allowance of claims 75 and 86-97. Although claim 87 may not “read” on the elected species, Applicant submits it should be allowed since it depends on claim 75.

Regarding new independent claims 98, 129, and 159, Applicant submits that these claims also are patentably distinguishable from the Capezzuto reference and should be allowed. Although claims 100-102, 108, 110-115, 118, 131-133, 139, 141-146, 149, and 162 may not “read” on the elected species, Applicant submits that these

claims also should be allowed due to their dependency from claims 98, 129, and 159.

Thus, Applicant submits that claims 98-172 should be allowed.

Applicant respectfully requests that this Amendment under 37 C.F.R. § 1.116 be entered by the Examiner, placing claims 1-172 in condition for allowance. Applicant submits that the proposed amendment to claim 75 and the addition of new claims 98-172 do not raise any issues necessitating any substantial, additional search of the art. Therefore, this Amendment should allow for immediate action by the Examiner.

Furthermore, Applicant respectfully points out that the final action presented some new arguments. If entry of the present Amendment is denied, Applicant will not have a full and fair opportunity to respond to those new arguments.

Finally, Applicant submits that the entry of the Amendment would place the application in better form for appeal, should the Examiner dispute the patentability of the pending claims.

Applicant therefore requests the entry of this Amendment and the timely allowance of the pending claims.

Applicant notes that the Office Action contains a number of assertions about the related art and the claims, with which Applicant does not necessarily agree.

Accordingly, Applicant declines to automatically subscribe to any assertion set forth in the Office Action, regardless of whether it is addressed above.

FINNEGAN
HENDERSON
FARABOW
GARRETT &
DUNNER LLP

1300 I Street, NW
Washington, DC 20005
202.408.4000
Fax 202.408.4400
www.finnegan.com

Please grant any extensions of time required to enter this Amendment and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: March 10, 2003

By: *Susanne T. Jones*
Susanne T. Jones
Reg. No. 44,472

FINNEGAN
HENDERSON
FARABOW
GARRETT &
DUNNER LLP

1300 I Street, NW
Washington, DC 20005
202.408.4000
Fax 202.408.4400
www.finnegan.com

APPENDIX

Applicant supplies this Appendix showing the changes to the claims, with deletions shown by bracketing and additions shown by underlining, in accordance with 37 C.F.R. §1.121c(1)(ii). This Appendix is not intended to be part of the application.

75. (Amended) An [The] applicator device for a liquid product, the applicator device comprising: [of claim 64]

a reservoir for containing the liquid product, the reservoir having an opening; and

an absorbent member provided in fluid communication with the reservoir, the absorbent member comprising at least two portions, a first application portion configured to apply the liquid product to a surface to be treated, and a second support portion configured to elastically support the first portion, wherein the first portion has a different density than the second portion, and

wherein the absorbent member is compressible.

FINNEGAN
HENDERSON
FARABOW
GARRETT &
DUNNER LLP

1300 I Street, NW
Washington, DC 20005
202.408.4000
Fax 202.408.4400
www.finnegan.com